

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

United States of America,

Defendant's Memorandum of Law

– against –

1:14-CR-366 (MAD)

Shakir Michael,

Defendant.

The Defendant will ask the Court to take judicial notice of the following statutes, and instruct the jury about same:

1. 18 U.S.C. Section 922, which reads:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

...

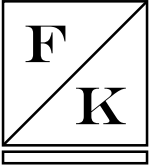
(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

...

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

...

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen,



knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

2. NY Penal Law § 140.25 (Burglary 2°), which reads:

A person is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when:

1. In effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:

(a) Is armed with explosives or a deadly weapon; or

...

(d) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm

Burglary in the second degree is a class C felony.

3. NY Penal Law § 265.01 (Criminal Possession of a Weapon 4°), which reads:

A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He or she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shiriken or “Kung Fu star”;

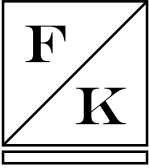
....

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

4. NY Penal Law § 265.02 (Criminal Possession of a Weapon 3°), which reads:

A person is guilty of criminal possession of a weapon in the third degree when:

(1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime; or



...

(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in subdivision one of section 70.02 of this chapter as part of the same criminal transaction.

Criminal possession of a weapon in the third degree is a class D felony.

5. NY Penal Law § 265.03 (Criminal Possession of a Weapon 2°), which reads:

A person is guilty of criminal possession of a weapon in the second degree when:

...

(3) such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business.

Criminal possession of a weapon in the second degree is a class C felony.

6. NY Penal Law § 165.45 (Criminal Possession of Stolen Property 4°), which reads:

A person is guilty of criminal possession of stolen property in the fourth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when:

...

4. The property consists of one or more firearms, rifles and shotguns, as such terms are defined in section 265.00 of this chapter; or

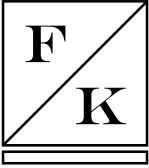
...

Criminal possession of stolen property in the fourth degree is a class E felony.

7. NY Penal Law § 220.06 (Criminal Possession of a Controlled Substance 5°), which reads:

A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or



...

5. cocaine and said cocaine weighs five hundred milligrams or more.

...

Criminal possession of a controlled substance in the fifth degree is a class D felony.

8. NY Penal Law § 220.03 (Criminal Possession of a Controlled Substance 7°), which reads:

A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance....

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

9. NY Vehicle and Traffic Law § 1192 (Operating a motor vehicle while under the influence of alcohol or drugs), which reads:

4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.

10. NY Penal Law § 155.30 (Grand Larceny 3°), which reads:

A person is guilty of grand larceny in the fourth degree when he steals property and when:

...

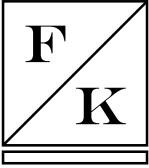
7. The property consists of one or more firearms, rifles or shotguns, as such terms are defined in section 265.00 of this chapter; or

Grand larceny in the fourth degree is a class E felony.

11. NY Penal Law § 265.11 (Criminal Sale of a Firearm 3°), which reads:

A person is guilty of criminal sale of a firearm in the third degree when such person is not authorized pursuant to law to possess a firearm and such person unlawfully either:

(1) sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person....



Criminal sale of a firearm in the third degree is a class D felony.

12. NY Penal Law § 145.05 (Criminal Mischief 3°), which reads:

A person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

...

2. damages property of another person in an amount exceeding two hundred fifty dollars.

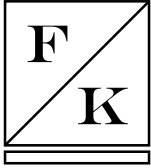
Criminal mischief in the third degree is a class E felony.

13. NY Penal Law § 70.02(1)(b), which classifies Burglary 2° and Criminal Possession of a Weapon 2° as Class C violent felonies, and NY Penal Law § 70.02(3)(b) which imposes a maximum sentence of 15 years' incarceration.

14. NY Penal Law § 70.02(1)(c), which classifies Criminal Possession of a Weapon 3° and Criminal Sale of a Firearm as Class D violent felonies, and NY Penal Law § 70.02(3)(c) which imposes a maximum sentence of 7 years' incarceration.

15. NY Penal Law § 70.00(2)(e) which imposes a maximum sentence of 4 years' incarceration for Criminal Mischief 3°.

16. NY Penal Law § 70.70(2)(a)(iii) which imposes a maximum sentence of 2 ½ years' incarceration for Criminal Possession of a Controlled Substance 5°.



Dated: January 31, 2015
Troy, New York

Respectfully submitted,

s/

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